



SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

CASE NUMBER _____ RE: Remand DATE JAN 03 2008
ORDER

The enclosed document is returned for the reason(s) marked below.

- () No Case Title ☒ No case action number INCORRECT: () Case Number () Court () County
- () Fee(s) Due \$ _____ Reason: _____
- () Check not signed () Document not signed/date () Document(s) do not comply with CRC 201 (d)
- () Please prepare a Document Cover Sheet which conforms with California Rules Of Court, 201 (f)
- () Please indicate hearing date, time and department on title page of document (CRC 311)
- () Complete Civil Case Cover Sheet 982.2(b)(1) and/or the Cover Sheet Addendum 202-19, return within 15 days
- () Original signatures of all counsel of record or unrepresented parties are required
- () Proof Of Service not completed _____
- () Please indicate names of Plaintiffs/Defendants: "et al" is not acceptable
- () The Document is not on the correct form or the form has been adopted by Judicial Council
- () No copies provided for return of conformed copies
- () Hereafter, no conformed copies will be returned unless a self addressed, stamped envelope is provided
- () Pursuant to Local Rule, Stipulations/Applications and Orders must be separate documents
- () An Application For Appointment Of Guardian Ad Litem must be filed for each minor Plaintiff before a summons can be issued
- () We cannot issue a summons, unless the names of the Plaintiff(s) and Defendant(s), including "Does", must appear exactly, as it appears on the Complaint/Petition
- () Please send future filings to proper court:
- () Please indicate which cross-complaint this filing is regarding:

X) Other: PLEASE PROVIDE "ALAMEDA COUNTY
SUPERIOR COURT" CASE ACTION NUMBER

Since it takes more time to reject a document than to process it, please enclose a self-addressed, stamped envelope for your return copies.

Address future Correspondence to:

Rene' C. Davidson Courthouse
 Alameda County Superior Court
 1225 Fallon Street, Room 109
 Oakland, Ca 94612
 (510) 272-6002

Superior Court Website Address:

<http://www.co.alameda.ca.us/domainweb>
<http://www.co.alameda.ca.us/courts>

From: CIVIL, LPA

UNITED STATES DISTRICT COURT
Northern District of California
450 Golden Gate Avenue
San Francisco, California 94102

www.cand.uscourts.gov

Richard W. Wieking
Clerk

General Court Number
415.522.2000

January 2, 2008

Superior Court of California
County of Alameda
1225 Fallon Street
Oakland, CA 94612

RE: CV 07-06126 MMC BERKELEY POLICE DEPARTMENT-v-EMANUEL SIMON EL BEY

Your Case Number: Q
Dear Clerk,

Pursuant to an order remanding the above captioned case to your court, transmitted herewith are:

- (x) Certified copies of docket entries
- (x) Certified copies of Remand Order
- (x) Other (E-Filing Case)

Please acknowledge receipt of the above documents on the attached copy of this letter.

Sincerely,

RICHARD W. WIEKING, Clerk



by: Alfred Amistoso
Case Systems Administrator

Enclosures
Copies to counsel of record

UNITED STATES DISTRICT COURT
Northern District of California
450 Golden Gate Avenue
San Francisco, California 94102

www.cand.uscourts.gov

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by: Alfred Amistoso
Case Systems Administrator

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ECF DOCUMENT
I hereby attest and certify this is a printed copy of a
document which was electronically filed with the United States
District Court for the Northern District of California.
Date Filed: 1/2/08
RICHARD W. STEKING, Clerk
As: *[Signature]*
ALFRED MISTOSO, Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BERKELEY POLICE DEPARTMENT, et al., No. C-07-6126 MMC

Plaintiffs,

**ORDER REMANDING ACTION TO
STATE COURT**

v.

EMANUEL SIMON EL BEY, and MAKARE
AKHET ATEN SIMON EL BEY,

Defendants

On December 4, 2007, defendants filed a "Writ of Mandamus in the Nature of Removal," by which defendants purport to remove an action from "superior (state) court." Because defendants did not identify therein the action being removed, the Court, by order filed December 13, 2007, directed defendants to file a copy of the complaint or other pleading filed by plaintiffs in state court.

Now before the Court is defendants' response to the Court's December 13, 2007 order, specifically, a December 20, 2007 filing titled "Writ of Mandamus in the Nature of Removal (From Superior (State) Court to Federal Court 28 § 1441 - 1446)." Attached to said filing are a number of documents, one of which is a copy of the state court matter defendants purport to remove: A "Notice to Appear," numbered 416008 and issued by the Berkeley Police Department on November 27, 2007, directing defendant Makare Akhet Aten Simon El Bey ("Makare Akhet Aten") to appear before the Superior Court of California, Alameda County, to respond to the charge that on November 27, 2007, Makare Akhet Aten

1 was driving a vehicle that was not properly registered and with an expired driver's license.¹

2 A criminal matter instituted in state court may be removed to district court, pursuant
3 to 28 U.S.C. § 1443, if the defendants can satisfy a two-part test. "First, the [defendants]
4 must assert, as a defense to the prosecution, rights that are given to them by explicit
5 statutory enactment protecting equal racial civil rights." Patel v. Del Taco, Inc., 446 F.3d
6 996, 999 (9th Cir. 2006) (internal quotation and citation omitted). "Second, [the defendants]
7 must assert that the state courts will not enforce that right, and that allegation must be
8 supported by reference to a state statute or constitutional provision that purports to
9 command the state courts to ignore federal rights." Id. (internal quotation and citation
10 omitted). Here, although defendants indicate they will contest the criminal charges made
11 against Makare Akhet Aten, defendants do not assert a defense based on rights given to
12 her by a statute protecting equal racial civil rights; rather, defendants assert defenses
13 allegedly provided by documents such as the "Zodiac Constitution." Even assuming
14 Makare Akhet Aten intends to raise a defense based on a statute protecting equal racial
15 civil rights, defendants do not, and cannot, point to any provision of California law "that
16 purports to command the state courts to ignore federal rights." See id.

17 Accordingly, the instant action is hereby REMANDED to the California Superior
18 Court for the County of Alameda.

19 The Clerk shall close the case.

20 **IT IS SO ORDERED.**

21
22 Dated: December 28, 2007

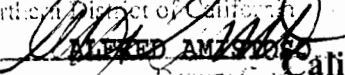
23 
MAXINE M. CHESNEY
United States District Judge

24
25
26
27 ¹The copy of the Notice to Appear provided by defendants is of poor quality, and the
28 specific violations alleged thereon are illegible. In their filings, however, defendants have
identified the nature of the charges set forth in the Notice to Appear.

I hereby certify that the enclosed instrument is a true and correct copy of the original on file in my office.
ATTEST:

RICHARD W. WIERING
Clerk, U.S. District Court
Northern District of California

ADRMOP, CLOSED, E-Filing, ProSe, REMAND

By  **U.S. District Court**
California Northern District (San Francisco)
Date 1/2/08 **CIVIL DOCKET FOR CASE #: 3:07-cv-06126-MMC**
Internal Use Only

Berkeley Police Department et al v. Simon El Bey et al
Assigned to: Hon. Maxine M. Chesney
Demand: \$3,000,000
Cause: 28:1651 Petition for Writ of Mandamus

Date Filed: 12/04/2007
Date Terminated: 12/28/2007
Jury Demand: None
Nature of Suit: 350 Motor Vehicle
Jurisdiction: Federal Question

Plaintiff

Berkeley Police Department

represented by **Berkeley Police Department**
PRO SE

Plaintiff

**State of California Department of
Motor Vehicles**

represented by **State of California Department of
Motor Vehicles**
PRO SE

V.

Defendant



Emanuel Simon El Bey

represented by **Emanuel Simon El Bey**
P.O. Box 1188
Richmond, CA 94804
510-837-5836
PRO SE

Defendant

Makare Akhet Aten Simon El Bey

represented by **Makare Akhet Aten Simon El Bey**
P.O. Box 1188
Richmond, CA 94804
510-837-5836
PRO SE

| Date Filed | # | Docket Text |
|------------|---|---|
| 12/03/2007 |  2 | MOTION/Application for Leave to Proceed in forma pauperis filed by Emanuel Simon El Bey, Makare Akhet Aten Simon El Bey. (sv, COURT STAFF) (Filed on 12/3/2007) (Entered: 12/11/2007) |
| 12/03/2007 |  3 | Ex Parte Application to Request Release of Property filed by Emanuel |

| | | |
|------------|----|--|
| | | Simon El Bey, Makare Akhet Aten Simon El Bey. (sv, COURT STAFF) (Filed on 12/3/2007) (Entered: 12/11/2007) |
| 12/03/2007 | 4 | ADR SCHEDULING ORDER: Case Management Conference set for 3/12/2008 10:30 AM. Case Management Statement due by 3/5/2008. (Attachments: # 1 Standing Order for Judge Larson, # 2 Standing Order for all Judges)(sv, COURT STAFF) (Filed on 12/3/2007) (Entered: 12/11/2007) |
| 12/03/2007 | | CASE DESIGNATED for Electronic Filing. (sv, COURT STAFF) (Filed on 12/3/2007) (Entered: 12/11/2007) |
| 12/04/2007 | 1 | PETITION for Writ of Mandamus (Filing fee \$350; ifpp). Filed by Emanuel Simon El Bey, Makare Akhet Aten Simon El Bey. (sv, COURT STAFF) (Filed on 12/4/2007) (Entered: 12/11/2007) |
| 12/06/2007 | 7 | Declination to Proceed Before a U.S. Magistrate Judge by Emanuel Simon El Bey, Makare Akhet Aten Simon El Bey. (ga, COURT STAFF) (Filed on 12/6/2007) (Entered: 12/12/2007) |
| 12/11/2007 | 5 | ORDER REASSIGNING CASE. Case reassigned to Judge Hon. Maxine M. Chesney for all further proceedings. Judge Magistrate Judge James Larson no longer assigned to the case. Signed by Executive Committee on 12/11/07. (mab, COURT STAFF) (Filed on 12/11/2007) (Entered: 12/11/2007) |
| 12/11/2007 | 6 | CLERK'S NOTICE of Impending Reassignment to U.S. District Judge (wh, COURT STAFF) (Filed on 12/11/2007) (Entered: 12/11/2007) |
| 12/13/2007 | 8 | ORDER DIRECTING DEFENDANTS TO SUPPLEMENT NOTICE OF REMOVAL; DIRECTING DEFENDANTS TO SERVE PLAINTIFFS; GRANTING APPLICATION TO PROCEED IN FORMA PAUPERIS. Defendants are ordered to supplement their notice of removal by filing, no later than December 28, 2007, the following document(s): (1) a copy of the complaint or other pleading filed by plaintiffs in state court; and (2) any other document filed in the state court action by either plaintiffs or defendants. Defendants are further ordered to serve counsel for plaintiffs, no later than December 28, 2007, with a copy of defendants' notice of removal, and to file with the Clerk, no later than December 28, 2007, proof of such service. Defendants' application to proceed in forma pauperis is granted. Signed by Judge Maxine M. Chesney on December 13, 2007. (mmclcl1, COURT STAFF) (Filed on 12/13/2007) (Entered: 12/13/2007) |
| 12/14/2007 | 9 | CASE MANAGEMENT SCHEDULING ORDER: Case Management Statement due by 3/7/2008. Case Management Conference set for 3/14/2008 10:30 AM.. Signed by Judge Maxine M. Chesney on 2/27/2007. (Attachments: # 1 Standing Orders)(tl, COURT STAFF) (Filed on 12/14/2007) (Entered: 12/14/2007) |
| 12/20/2007 | 10 | WRIT OF MANDAMUS IN THE NATURE OF REMOVAL (From Superior (State) Court to Federal Court 28 1441-1446). Filed by Emanuel Simon El Bey, Makare Akhet Aten Simon El Bey. Re 8 Order (aaa, Court |

| | | |
|------------|-------------|---|
| | | Staff) (Filed on 12/20/2007) (Entered: 12/21/2007) |
| 12/20/2007 | ● | Summons Issued as to Berkeley Police Department, State of California Department of Motor Vehicles. (aaa, Court Staff) (Filed on 12/20/2007) (Entered: 12/21/2007) |
| 12/28/2007 | ● <u>11</u> | ORDER REMANDING ACTION TO STATE COURT. Signed by Judge Maxine M. Chesney on December 28, 2007. (mmclcl1, COURT STAFF) (Filed on 12/28/2007) (Entered: 12/28/2007) |
| 12/28/2007 | ● | (Court only) ***Civil Case Terminated. (mmclcl1, COURT STAFF) (Filed on 12/28/2007) (Entered: 12/28/2007) |
| 12/28/2007 | ● <u>12</u> | CLERK'S NOTICE: Sent by U.S. MAIL a certified copy of <u>11</u> Remand order and a certified copy of the civil docket to the Superior Court of California County of Alameda. (aaa, Court Staff) (Filed on 12/28/2007) (Entered: 01/02/2008) |

08 JAN 77 PM 1:06
THOMAS W. ...
U.S. DISTRICT COURT
DISTRICT OF ...

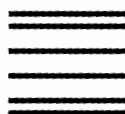
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